

**VIRGINIA WASTE MANAGEMENT BOARD  
ENFORCEMENT ACTION**

**ORDER BY CONSENT  
ISSUED TO**

**E. I. DU PONT DE NEMOURS AND COMPANY**

**EPA HAZARDOUS WASTE ID No. VAD980554539**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Sections 10.1-1455 of the Code of Virginia between the Virginia Waste Management Board and E. I. du Pont de Nemours and Company to resolve certain violations of the Virginia Waste Management Act and the Virginia Hazardous Waste Management Regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Order" means this document, termed a Consent Order under the authority of the Virginia Waste Management Act.
3. "Waste Board" means the Virginia Waste Management Board, a permanent Citizens' Board of the Commonwealth of Virginia described in Va. Code §§ 10.1-1401 and 10.1-1184.

4. "DuPont-Front Royal" or "the Company" means the E. I. du Pont de Nemours and Company Performance Coatings facility located at 7961 Winchester Road, Front Royal, Virginia.
5. "DEQ" means the Virginia Department of Environmental Quality, an independent administrative agency within the executive branch of the Commonwealth of Virginia as described in Va. Code § 10.2-1183.
6. "VRO" means DEQ's Valley Regional Office.
7. "Director" means the Director of DEQ, whose powers and duties are described in Va. Code § 10.1-1185.
8. "VHWMR" means the Waste Board's Hazardous Waste Management Regulations, 9 VAC 20-60-12 et seq.
9. "40 CFR" means Title 40 of the Code of Federal Regulations.

#### **SECTION C: Findings of Facts and Conclusions of Law**

1. DuPont-Front Royal is a manufacturer of coatings for use in the automotive industry.
2. DuPont-Front Royal is a generator of hazardous waste operating under EPA Hazardous Waste ID No. VAD980554539. DuPont-Front Royal annually generates approximately 9 million pounds of both listed and characteristic hazardous waste streams. Of this amount, approximately 7 million pounds is in the form of solvent recovery sludge.
3. On July 26, 2001, staff from DEQ's Waste Compliance Program conducted a hazardous waste compliance inspection of the Du Pont-Front Royal facility. Based on observations made during the inspection, on September 26, 2001, DEQ issued Notice of Violation No. WS-01-09-VRO-025 to DuPont-Front Royal citing the following apparent violations of 40 CFR and the VHWMR:
  - a. Storage of hazardous waste by a Large Quantity Generator for greater than 90 days without a permit in apparent violation of 40 CFR 262.34 and 9 VAC 20-60-262 of the VHWMR;
  - b. Failure to place an accumulation start date on a container of hazardous waste (rail car) in apparent violation of 40 CFR 262.34(a)(2) and 9 VAC 20-60-262 of the VHWMR;

- c. Failure to label a pre-transport container of hazardous waste (rail car) with the words "hazardous waste" in apparent violation of 40 CFR 262.34(a)(3) and 9 VAC 20-60-262 of the VHWMR;
  - d. Failure to label containers located in satellite accumulation areas (rag containers) with the words "hazardous waste" or other words that identify the contents in apparent violation of 40 CFR 262.34(c)(1)(ii) and 9 VAC 20-60-262 of the VHWMR;
  - e. Failure to inspect the manufacturing floor compactor waste storage area at a minimum frequency of once per week in apparent violation of 40 CFR 264.174 and 9 VAC 20-60-264 of the VHWMR;
  - f. Failure to notify DEQ of the location of a less than 90 day storage area (rail car) in apparent violation of 9 VAC 20-60-262.B.4 of the VHWMR;
  - g. Failure to specify a management plan or make a declaration regarding universal waste (mercury containing lamps) and failure to label containers of universal waste in apparent violation of 9 VAC 20-60-1495 and 9 VAC 20-60-1505C.4 of the VHWMR, respectively;
  - h. Failure to evaluate solvent distillation process vents under Subpart AA of 40 CFR Part 265, Air Emissions Standards for Process Vents, in apparent violation of 40 CFR 265.1032(a) and 9 VAC 20-60-265 of the VHWMR; and,
  - i. Failure to maintain a list of the equipment and to provide the design capacity of the units (equipment ancillary to tanks 5101, 5102, 5103 and 5104) subject to regulation by Subpart BB of 40 CFR 265, Air Emission Standards for Equipment Leaks, in apparent violation of 40 CFR 265.1064(g) and 9 VAC 20-60-265 of the VHWMR.
4. By letter dated October 10, 2001, DuPont-Front Royal responded to the September 26, 2001, Notice of Violation issued by DEQ. In its letter, the Company identified that the apparent violations listed above under Paragraph 3.a through 3.f had been addressed and resolved; however, the Company questioned DEQ's citation of the apparent violations listed above under Paragraph 3.g through 3.i.
  5. Representatives of DEQ and DuPont held a conference call on October 31, 2001, and subsequently a meeting and conference call in Richmond, Virginia, on January 25, 2002, to further discuss the apparent violations cited by DEQ in the September 26, 2001, Notice of Violation. Based on these discussions, DEQ's further review of the case and on the information contained in the Company's October 10, 2001, letter, DEQ has reassessed the apparent

violations listed above under Paragraph 3.g through 3.i as follows:

- A. (3.g) - Failure to specify a management plan or make a declaration regarding universal waste (mercury containing lamps) and failure to label containers of universal waste in apparent violation of 9 VAC 20-60-1495 and 9 VAC 20-60-1505C.4 of the VHWMR, respectively.
- (1) In its October 10, 2001, response letter, DuPont-Front Royal explained that the Company uses only toxicity characteristic leaching procedure-compliant low mercury fluorescent lamps and is, therefore, not in violation of 9 VAC 20-60-1495 or 9 VAC 20-60-1505C.4 of the VHWMR.
  - (2) This information was not available during DEQ's July 26, 2001, inspection of the Company. DEQ agrees that this violation does not apply to DuPont-Front Royal based on the July 26, 2001, inspection; accordingly, this violation is hereby vacated.
- B. (3.h) - Failure to evaluate solvent distillation process vents under Subpart AA of 40 CFR Part 265, Air Emissions Standards for Process Vents, in apparent violation of 40 CFR 265.1032(a) and 9 VAC 20-60-265 of the VHWMR.
- (1) DuPont-Front Royal asserts that this provision of 40 CFR and the VHWMR does not apply to its solvent distillation process vents given that they are associated with the recovery of solvents used in on-site manufacturing operations.
  - (2) Based on further review, DEQ agrees with the Company's assessment of this issue; accordingly, this violation is hereby vacated.
- C. (3.i) - Failure to maintain a list of the equipment and to provide the design capacity of the units (equipment ancillary to tanks 5101, 5102, 5103 and 5104) subject to regulation by Subpart BB of 40 CFR 265, Air Emission Standards for Equipment Leaks, in apparent violation of 40 CFR 265.1064(g) and 9 VAC 20-60-265 of the VHWMR.
- (1) DuPont-Front Royal asserts that the equipment ancillary to tanks 5101 and 5102 is associated with the distillation column used to recover solvents used in on-site manufacturing operations and, therefore, is equipment not subject to regulation under Subpart BB of 40 CFR Part 265.
  - (2) As cited in the September 26, 2001, Notice of Violation, DEQ was referring to the equipment ancillary to tanks 5101, 5102, 5103 and 5104 as being subject

to regulation under Subpart BB of 40 CFR Part 265. Tanks 5103 and 5104 are not associated with the distillation column used to recover solvents used in on-site manufacturing operations. DuPont-Front Royal has not contested the applicability of Subpart BB of 40 CFR Part 265 to the equipment ancillary to tanks 5103 and 5104; however, the information necessary to fully demonstrate the compliance of this equipment with the Subpart BB provisions was not made available by DuPont-Front Royal representatives during the July 26, 2001, inspection of the facility. DuPont-Front Royal subsequently did provide information to DEQ demonstrating that the equipment ancillary to tanks 5103 and 5104 is in compliance with Subpart BB of 40 CFR Part 265; therefore, that portion of the apparent violation regarding the equipment ancillary to tanks 5103 and 5104 has been resolved. DEQ is deferring enforcement action on the applicability of Subpart BB of 40 CFR Part 265 to the equipment ancillary to tanks 5101 and 5102 pending further review of the issue; however, DEQ reserves all of its enforcement authorities on this issue.

6. DEQ acknowledges that representatives of DuPont-Front Royal have verbally indicated to DEQ that the Company plans to pursue a formal variance from the VHWMR and 40 CFR with the intent of fully resolving the violations cited in Item No. 9 of Notice of Violation No. WS-01-09-VRO-025 and Paragraph 3.i of Section C of the Order and as referenced in Paragraph 5.C. (2) of Section C of the Order.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 10.1-1455 orders DuPont-Front Royal, and DuPont-Front Royal agrees that:

1. DuPont-Front Royal shall not treat, store, or dispose of hazardous waste at any facility owned, operated, leased, or otherwise controlled by DuPont-Front Royal, except in accordance with the VHWMR or a permit issued by DEQ for such activity or if DuPont-Front Royal seeks and is granted an emergency hazardous waste management permit under 9 VAC 20-60-1050.A. for such activity;
2. DuPont-Front Royal voluntarily agrees, to pay a civil charge of **\$4,700** in settlement of the violations cited in this Order
3. **\$1175.00** of this civil charge shall be paid within 30 days of the effective date of this Order. Payment shall be by check, certified check, money order, or cashier's check payable to **"Treasurer of the Commonwealth of Virginia"** and sent to:

**Receipts Control**

**Department of Environmental Quality  
P. O. Box 10150  
Richmond, Virginia 23240**

DuPont-Front Royal shall include its Federal Identification Number with the civil charge payment and shall note on the check that the payment is being made pursuant to this Order.

4. **\$3525.00** of this civil charge shall be satisfied upon completion by DuPont-Front Royal of a Supplemental Environmental Project (SEP) pursuant to Virginia Code 10.1-1186.2 and as described in Appendix A of this Order.
5. By signing this Order, DuPont-Front Royal certifies that it has not commenced performance of the SEP before DEQ identified the violations in this Order and approved the SEP.
6. In the event that the SEP is not performed as described in Appendix A, upon notification by the Department, DuPont-Front Royal shall pay the amount specified in Paragraph 4 above within 30 days of such notification according to the procedures specified in Paragraph 3 above, unless an alternate project has been agreed upon by the parties.

**SECTION E: Administrative Provisions**

1. With the written consent of DuPont-Front Royal, the Consent Order may be modified, rewritten, or amended for good cause shown by DuPont-Front Royal, or upon the Board's own motion after notice and opportunity to be heard.
2. This Order addresses and resolves those violations identified under Items (1) through (8) in Notice of Violation No. WS-01-09-VRO-025 issued to DuPont-Front Royal by DEQ on September 26, 2001, and identified herein in Section C, Paragraph Nos. 3.a through 3.h. This Order also addresses and resolves the portion of the violation addressed under Item (9) in Notice of Violation No. WS-01-09-VRO-025 and herein in Section C, Paragraph No. 3.i regarding equipment ancillary to tanks identified by DuPont-Front Royal as 5103 and 5104. This Order does not resolve the portion of the violation identified under Item (9) in Notice of Violation No. WS-01-09-VRO-025 and identified herein in Section C, Paragraph No. 3.i regarding equipment ancillary to tanks identified by DuPont-Front Royal as 5101 and 5102. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For the purpose of this Order only, DuPont-Front Royal admits the jurisdictional allegations in the Order. By entering into this Order, DuPont-Front Royal does not admit the factual allegations or legal conclusions contained herein for this or any subsequent proceeding.
4. DuPont-Front Royal consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. DuPont-Front Royal declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 *et seq.*, and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by DuPont-Front Royal to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. DuPont-Front Royal shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. DuPont-Front Royal shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. DuPont-Front Royal shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 48 hours of learning of any condition above, which DuPont-Front Royal intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order. Any such verbal notification made under this provision shall be followed by a written notification within five business days.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and DuPont-Front Royal.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to DuPont-Front Royal. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve DuPont-Front Royal from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, DuPont-Front Royal voluntarily agrees to the issuance of this Order.

And it is so ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Robert G. Burnley, Director  
Department of Environmental Quality

DuPont-Front Royal voluntarily agrees to the issuance of this Order.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Commonwealth of Virginia

City/County of \_\_\_\_\_

The foregoing document was signed and acknowledged before me this \_ day of \_\_\_\_\_, 2002, by \_\_\_\_\_, who is  
(name)

\_\_\_\_\_ of DuPont-Front Royal, on behalf of the Company.  
(title)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_.

## **APPENDIX A**

### **SUPPLEMENTAL ENVIRONMENTAL PROJECT**

1. The Supplemental Environmental Project (SEP) to be performed by DuPont-Front Royal is the purchase of HAZMAT equipment for the Warren County Department of Fire & Rescue Services. Equipment eligible to be purchased under the SEP includes: (1) a DVD recorder/player; (2) a VCR recorder/player; (3) a projection screen; (4) a sound system for the training room; (5) a video camera; (6) a hazardous materials trailer; (7) two multi-gas detectors; (8) two SCBAs with PASS devices installed; and, (9) an SUV to pull a hazardous materials trailer. **Item numbers 6, and/or 7 and/or 8 shall be purchased first. Any SEP funds remaining after the purchase of these items may be applied toward the purchase of all or part of item numbers 1, 2, 3, 4, 5 and 9.**
2. The net cost of the SEP to DuPont-Front Royal shall not be less than **\$3,525.00**. In the event that the final cost of the SEP is less than this amount, DuPont-Front Royal shall pay the remainder of the amount to the Commonwealth of Virginia, unless otherwise agreed to by the Department.
3. The SEP shall be completed by DuPont-Front Royal within one year of the effective date of this Order. DuPont-Front Royal shall provide the DEQ with verification of completion of the SEP in the form of cost invoices, or like documentation, within 15 days of the project completion date.
4. In the event that DuPont-Front Royal publicizes the SEP or the results of the SEP, DuPont-Front Royal shall state in a prominent manner, the project is part of a settlement for an enforcement action.
5. The DEQ has the sole discretion to determine whether the SEP has been completed in a satisfactory manner.